

EXHIBIT D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS,
individually and as Successor
in Interest for RICHARD
DESANTIS, deceased, and as
Guardian Ad Litem for DANI
DESANTIS, a minor and TIMOTHY
FARRELL, a minor,

CERTIFIED COPY

Plaintiffs,

vs.

CASE NO. C 07 3386 JSW

CITY OF SANTA ROSA, JERRY
SOARES, RICH CELLI, TRAVIS
MENKE, PATRICIA MANN and DOES
1 through 25, inclusive,

Defendants.

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DEPOSITION OF PATRICIA MANN

November 15, 2007

Reported by:
JUDY A. MANFRED
CSR No. 4748

HANNAH KAUFMAN & ASSOCIATES, INC.
Certified Shorthand Reporters
472 Pacheco Street
San Francisco, California 94116
(415) 664-4269

1	I N D E X		1	PATRICIA MANN,
2		PAGE	2	sworn as a witness by the Certified
3	DEPOSITION OF PATRICIA MANN		3	Shorthand Reporter, testified as follows:
4	EXAMINATION BY MR. SCOTT	5	4	-oOo-
5			5	THE VIDEOGRAPHER: Good morning. This marks the
6	E X H I B I T S		6	beginning of volume 1, videotape 1 in the deposition of
7	PLAINTIFFS'	PAGE	7	Patricia Mann in the matter of Patricia Desantis, et al.
8	1 A drawing, not to scale	61	8	versus City of Santa Rosa, et al. in the United States
9			9	District Court, Northern District of California, case
10			10	number C 07 3386 JSW. Today's date is November 15th,
11			11	2007, and the time is now 9:39. The location of this
12			12	deposition is 1375 Sutter Street, Suite 222, San
13			13	Francisco, California. The deposition was noticed by John
14			14	Scott of Scott Law Firm and the videotape is being
15			15	produced on behalf of the plaintiff. The video operator
16			16	is James Taylor, a California Notary Public for the County
17			17	of San Francisco, employed by Dan Mottaz Video
18			18	Productions, LLC, 182 Second Street, Suite 202, San
19			19	Francisco, California 94105. 415-624-1300. The Court
20			20	Reporter is Judy Manfred.
21			21	Would counsel please identify themselves and
22			22	state whom they represent.
23			23	MR. SCOTT: John Scott appearing for the
24			24	plaintiffs.
25			25	MS. FOWLER: Caroline Fowler, Assistant City
		2		4
1	BE IT REMEMBERED that pursuant to Notice of		1	Attorney, on behalf of the defendants.
2	Taking Deposition, and on Thursday, the 15th day of		2	THE VIDEOGRAPHER: If there are no stipulations
3	November, 2007, commencing at the hour of 9:39 a.m.		3	the Court Reporter may administer the oath.
4	thereof, at the offices of The Scott Law Firm, 1375 Sutter		4	(The oath was administered by the Court
5	Street, Suite 222, San Francisco, California, before me		5	Reporter.)
6	JUDY A. MANFRED, a Certified Shorthand Reporter in the		6	EXAMINATION BY MR. SCOTT
7	State of California, personally appeared,		7	MR. SCOTT: Q. Would you state your full name
8	PATRICIA MANN,		8	for the record, please.
9	called as a witness herein; and the said witness, being by		9	A. Patricia Marie Mann.
10	me first duly sworn, was thereupon examined and testified		10	Q. May I call you Ms. Mann or would you prefer
11	as is hereinafter set forth.		11	Officer?
12			12	A. Ms. Mann is fine.
13	A P P E A R A N C E S		13	Q. Ms. Mann, my name is John Scott and I'm one of
14	THE SCOTT LAW FIRM, 1375 Sutter Street, Suite		14	the attorneys who represents the family, the widow and
15	222, San Francisco, California 94109, represented by JOHN		15	child of Richard Desantis, in the lawsuit that's been
16	H. SCOTT, Attorney at Law, appeared on behalf of the		16	brought. We're here to take your depositions today. You
17	Plaintiffs.		17	are represented by an attorney. Have you ever had your
18	LAW OFFICES OF ERIC SAFIRE, 2431 Fillmore		18	deposition taken before?
19	Street, San Francisco, California 94115, represented by		19	A. No.
20	ERIC SAFIRE, Attorney at Law, appeared on behalf of the		20	Q. In that case, let me make a few comments and
21	Plaintiffs.		21	observations. Have you testified in court?
22	OFFICE OF THE CITY ATTORNEY, 100 Santa Rosa		22	A. Yes.
23	Avenue, Santa Rosa, California 95402-1678, represented by		23	Q. And have you had training in courtroom demeanor
24	CAROLINE L. FOWLER, Assistant City Attorney, appeared on		24	and things of that nature?
25	behalf of the Defendants.		25	A. Yes.
		3		5

DEPOSITION OF PATRICIA MANN

1 Q. And were there gunshot residue tests done on you, 2 do you know? 3 A. No. 4 MS. FOWLER: No, you don't know or, no, there 5 wasn't. 6 THE WITNESS: No, there wasn't -- it was not done 7 on me. 8 MR. SCOTT: Q. And how many shots did you fire? 9 A. One. 10 Q. And when you fired your shot how far was 11 Mr. Desantis from you? 12 A. Approximately 15 feet. 13 Q. And was he sprinting in your direction? 14 A. Yes, he was charging at me. 15 Q. But would it be fair to say he was sprinting? 16 A. Yes. 17 Q. And where did you aim when you fired? 18 A. Center mass, the center of his body. 19 Q. Did you hit him? 20 A. I do not know. 21 Q. All right. Have you learned that one of the 22 shots fired that night missed Mr. Desantis and hit his 23 house? 24 A. Yes. 25 Q. How did you learn that?	1 before you got to the home that night, the night of the 2 shooting? 3 MS. FOWLER: And are you also excluding whatever 4 she might have been told by dispatch? 5 MR. SCOTT: No. 6 MS. FOWLER: Prior to the incident starting? 7 MR. SCOTT: Q. Yeah, other than what you heard 8 from dispatch, did you know anything about Richard 9 Desantis before you got to his home the night of the 10 shooting? 11 A. No. 12 Q. Okay. Why did you go to the scene where the 13 shooting occurred that night? 14 A. I was dispatched to the scene. 15 Q. Were you riding with a partner or were you alone 16 that night? 17 A. I was alone. 18 Q. And when you arrived -- when I say the scene, I'm 19 talking about the area of the house and the driveway, the 20 area where the shooting occurred. 21 A. Okay. 22 Q. Fair enough? So if I say the scene, I'm 23 referring to that general area. 24 A. Okay. 25 Q. When you arrived at the scene, did you see anyone
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1 A. I was told. 2 Q. Do you recall when you first learned it? 3 A. No, I don't recall. 4 Q. Was it before or after you were interviewed the 5 next day? 6 A. I believe it was before. 7 Q. To your knowledge, has there been an 8 investigation to determine whether you hit him or not, 9 whether you hit Desantis or not? 10 A. To my knowledge, no. 11 Q. Is that something you'd like to know? 12 A. It doesn't make a difference to me if the 13 information is found, then sure. 14 Q. So it doesn't make a difference to you if you, in 15 fact, hit him or didn't hit him? 16 A. No. 17 (Mr. Safire enters deposition room.) 18 MR. SCOTT: Q. Did you know who Richard Desantis 19 was before that night? 20 A. Meaning had I had any prior contacts with him? 21 Q. Or heard about him? 22 A. No, I did not. 23 Q. So no prior contacts, correct? 24 A. With me, no. 25 Q. Well, did you know anything about him from others	1 else present? 2 A. Initially, no. I just saw one other patrol car. 3 It was not until I parked and exited my patrol car that I 4 saw other officers. 5 Q. And when you arrived at the house was it your 6 understanding that shots had been fired inside the house? 7 A. Yes. 8 Q. When you arrived at the scene was it your 9 intention to use your car for cover? 10 A. No. 11 Q. Why not? 12 A. I needed to make a tactical approach to the 13 residence so I parked my car further away from the scene. 14 Q. How far away from the scene? 15 A. Approximately half a block. 16 Q. And when you arrived was someone in charge, 17 someone in command of the scene? 18 A. Yes. 19 Q. Who was in command? 20 A. I heard over the radio while I was driving to the 21 scene that Sergeant Rich Celli stated he would be in 22 charge of the tactical operations on the scene and that 23 Sergeant Jerry Soares would be in charge of radio 24 communication. 25 Q. And when you arrived at the scene was Sergeant
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<p>1 over his shoulder before -- how long did that last, from 2 that looking backward to turning around and then charging? 3 A. Approximately three seconds. 4 Q. Oh. And, now, when -- did you have your Taser 5 with you on your duty belt that night? 6 A. Yes, I did. 7 Q. And when he was on the ground and you could see 8 that he had nothing in his hands, did you consider taking 9 -- holstering your weapon and taking out your Taser? 10 A. No, I did not. 11 Q. Okay. Any reason why you didn't? 12 A. He was out of range for the Taser. 13 Q. Okay. That would have been about 40 feet? 14 A. His distance -- approximately his distance from 15 where I was, yes, 40 feet, approximately. 16 Q. All right. And would you characterize his 17 movement toward you as a sprint? 18 A. Yes, he was charging at us; he was sprinting at 19 us, yes. 20 Q. Have you ever been to a track meet? 21 A. Yes. 22 Q. Did you run track? 23 A. A long time ago, yes. 24 Q. In high school? 25 A. Junior high.</p> <p style="text-align: right;">90</p>	<p>1 his hand down and I would lose sight of it behind his 2 back. 3 Q. Okay. And did he bring his left hand down while 4 he was sprinting also or just his right hand? 5 A. He brought his left hand down as well, but I was 6 able to maintain a visual on the left hand. 7 Q. So because of the angle as he was sprinting you 8 would lose sight of his right hand as he was sprinting 9 because just the way his arms were moving? 10 A. No. He was running straight at me. The reason 11 why I lost sight of his right hand is because as I saw it 12 it kept going behind his back. 13 Q. For how long? 14 A. With each stride. Every time he would bring his 15 arm up and bring it back in more like a running stride, it 16 would go back behind his waist. 17 Q. And how many strides did he take in your 18 direction from location number 2 to the time you heard the 19 first shot fired? 20 A. I don't know how many strides. I can estimate 21 distance of how long. 22 Q. Okay. Approximately how far had he gone while he 23 was sprinting to the time you heard the first shot? 24 A. I believe -- I estimate that Mr. Desantis, when 25 he started charging us, ran or sprinted approximately ten</p> <p style="text-align: right;">92</p>
<p>1 Q. Okay. Were you a sprinter? 2 A. Yes. 3 Q. Okay. You run the hundred? 4 A. Yes, and the four-by-four. 5 Q. All right. Me too in high school. And did you 6 -- would you say that he was -- based on your experience 7 in junior high school, track and being a sprinter, would 8 you characterize what he was doing as sprinting toward 9 you? 10 A. Yes. 11 Q. All right. And his legs were churning? 12 A. Yes. 13 Q. And his hands and arms were moving like a 14 sprinter? 15 A. His hands and arms were moving very rapidly. 16 Q. Consistent with sprinting? 17 A. Not exactly, no. 18 Q. What was it about his arms that was not 19 consistent with sprinting? 20 A. I do not recall seeing his fists closed or in a 21 sprinter's position where they might have their hands {} 22 bladed like this. His hands were open and loose; they 23 weren't straight in a -- along his sides. He was waving 24 them around and his right hand kept dropping out of my 25 sight because when he was charging at us he kept bringing</p> <p style="text-align: right;">91</p>	<p>1 feet and then the Sage weapon was fired. 2 Q. And approximately how many strides did he take to 3 cover that ten feet? 4 A. I -- 5 MS. FOWLER: It's already been asked and 6 answered. She said she couldn't answer. 7 THE WITNESS: I don't know. 8 MR. SCOTT: Q. And did you know -- well, when 9 you heard the first shot fired, did you know it was from 10 the Sage? 11 A. Yes, I did. 12 Q. And how did you know that? 13 A. It has a completely different sound than a 14 firearm. 15 Q. All right. And so from your training, 16 experience, you knew from the sound that it was a Sage? 17 A. I knew from the sound that it was not a firearm. 18 I honestly cannot remember if I knew it was specifically 19 the Sage. 20 Q. And after you heard what you believed was the 21 Sage being fired, what's the next thing you observed? 22 A. I remember hearing some sort of, like, thud and 23 then seeing Mr. Desantis slow his pace just for one second 24 and then he didn't collapse, but he kind of, like, leaned 25 his shoulder down.</p> <p style="text-align: right;">93</p>

1 Q. His left shoulder?
2 **A. At the same -- I believe so.**
3 Q. Okay.
4 **A. I honestly can't remember. I just remember**
5 **seeing him lean his shoulder down very slightly right when**
6 **I heard a thud noise.**
7 Q. When you say thud, can you be more specific? I
8 guess thud is kind of specific but, you know, I'm --
9 **A. Yeah. Something like hitting him.**
10 Q. All right.
11 **A. Yeah, the sound of something coming into contact**
12 **with his skin, basically.**
13 Q. And at the time did you associate the thud with
14 the shot that was fired?
15 **A. At that time, yes, I did.**
16 Q. And so you thought he'd been hit by the Sage?
17 **A. Yes.**
18 Q. And based on your -- had you had any training yet
19 with the Sage at the time of this incident?
20 **A. No. I just knew of it, but I had not been**
21 **trained with it yet.**
22 Q. Did you have any information at that time as to
23 what a Sage round would or could do to someone it hit?
24 MS. FOWLER: I'm going to object. Incomplete
25 hypothetical, but if you can answer as phrased, go ahead.

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1 THE WITNESS: I had not received any formal
2 training, no.
3 MR. SCOTT: Q. Okay. But through -- I don't
4 know, just word or talk around the department, did you
5 have any information, informal information about what a
6 Sage round could or might possibly do if it hit a person?
7 MS. FOWLER: Object to the extent it calls for
8 speculation.
9 MR. SCOTT: Q. Go ahead.
10 **A. Well, I would have to make an assumption --**
11 Q. No, I'm --
12 **A. -- for that.**
13 Q. Just what you heard, if anything.
14 **A. I don't recall specifically what I've heard. I**
15 **knew that it shot a large plastic projectile and I can**
16 **only assume when one gets shot at you that -- what it**
17 **might do at that point, based on my training at that time.**
18 Q. And you later -- through your training, you got
19 more information after this incident?
20 **A. Yes.**
21 Q. And what did you later learn that it does?
22 **A. That it really depends on the situation. You**
23 **know, it can cause very traumatic injury if it's shot at a**
24 **close range. The further away you are, the less of an**
25 **impact it has. It's... yeah.**

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1 Q. And after you heard the thud, were you attempting
2 to determine where it may have struck Mr. Desantis?
3 **A. No, there was no time.**
4 Q. Okay.
5 **A. Like I said, he maybe stalled for less than a**
6 **second before continuing to charge at me.**
7 Q. And when you say he stalled, what do you mean by
8 that?
9 **A. That's when he broke his stride and leaned his**
10 **shoulder down and that was for less than a second and...**
11 Q. When you say broke his stride, do you mean he
12 went from more of a sprint to a jog or did he actually
13 stop?
14 **A. He -- no, he did not stop. He just slightly**
15 **slowed down.**
16 Q. So more -- it became more of a jog than a sprint?
17 **A. He was running.**
18 Q. All right.
19 **A. And that's faster than a jog, in my**
20 **interpretation.**
21 Q. Fair enough. Oh, it is. Running is faster than
22 a jog. So he was still sprinting, he just was slowed down
23 a little bit?
24 **A. Again, for less than a second, so it was maybe**
25 **one stride.**

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1 Q. Were you waiting to see if that -- being hit, the
2 thud, was going to drop him?
3 **A. I was assessing the situation to see, you know,**
4 **what he was going to do next, yes.**
5 Q. Okay. And in your mind were you wondering if
6 that thud was going to drop him?
7 **A. Well, not if it was, because it didn't. I don't**
8 **know if I'm not answering the question you're trying to**
9 **ask, but there was no time for me to wonder if it was**
10 **going to drop him because it did not. He remained**
11 **upright.**
12 Q. For how long?
13 **A. He never went back down to the ground until after**
14 **he was struck with lethal rounds.**
15 Q. And how much time passed from when you heard the
16 thud to when lethal rounds were fired?
17 **A. Approximately two seconds. Again, it would**
18 **probably be easier for me to give a distance estimation.**
19 Q. Okay. So you heard the thud. And can you put a
20 number 3 on exhibit number 1 approximately where he was
21 when you heard the thud?
22 **A. Sure.**
23 Q. And then after you heard the thud, he kept
24 running in your direction?
25 **A. Yes.**

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<p>1 Q. Are these targets, are these silhouettes of 2 persons or something else?</p> <p>3 A. They are silhouettes of people or persons.</p> <p>4 Q. So since you saw him hit a target, a silhouette 5 at a hundred yards, you felt that the night of this 6 shooting that when you heard his rifle being fired, would 7 it be fair to say you assumed that he shot -- that he hit 8 Desantis?</p> <p>9 A. I did not make any assumptions of whether or not 10 he hit Mr. Desantis.</p> <p>11 Q. Now, after he fired did you hear a thud or 12 anything like that?</p> <p>13 A. No, I just heard the round being fired.</p> <p>14 Q. And after he fired the rifle, did you see it have 15 any effect on Mr. Desantis?</p> <p>16 A. No.</p> <p>17 Q. And how much time passed from when Sergeant Celli 18 fired his rifle to when you fired your weapon?</p> <p>19 A. Less than a second, or approximately a second, 20 right around there.</p> <p>21 Q. And during that second were you attempting to 22 assess what impact the thud and the rifle shot had on 23 Mr. Desantis?</p> <p>24 A. I believe I already did assess the situation at 25 that point.</p> <p style="text-align: right;">114</p>	<p>1 A. I was told that sympathetic gunfire is, again, 2 pretty much just like how it sounds, when one person fires 3 other people fire in response, not to the threat but to 4 hearing the gunshots.</p> <p>5 Q. And so that's something you had training with 6 from the Army?</p> <p>7 A. The Army, yes, as well as in the police academy.</p> <p>8 Q. And in the police academy was the training 9 essentially the same as in the Army or was it different?</p> <p>10 A. It was similar.</p> <p>11 Q. Did you ever ask Officer Jones why he did not 12 fire?</p> <p>13 A. No, I did not.</p> <p>14 Q. Do you believe Officer Jones should have fired?</p> <p>15 MS. FOWLER: Object. Calls for speculation, lack 16 of foundation.</p> <p>17 MR. SCOTT: Q. Go ahead.</p> <p>18 A. No, I'm not going to answer that.</p> <p>19 MR. SCOTT: Because?</p> <p>20 MS. FOWLER: Because I objected. She doesn't 21 know what Officer Jones knew or what was in his mind or 22 his sight or vision. It's --</p> <p>23 MR. SCOTT: Then she can say she doesn't know.</p> <p>24 MS. FOWLER: She is not going to answer that 25 question.</p> <p style="text-align: right;">116</p>
<p>1 Q. And did you think that he was running towards you 2 with a bullet and a projectile in him or did you think 3 that he had not been hit?</p> <p>4 A. I believed that he had been hit with a 5 projectile. I did not know whether or not he had been hit 6 with a rifle round.</p> <p>7 Q. And so it would have been about a second or less 8 to when you heard the rifle fired to when you fired?</p> <p>9 A. Correct.</p> <p>10 Q. Did you fire before or after Mr. Officer Menke?</p> <p>11 A. After.</p> <p>12 Q. About how much time after?</p> <p>13 A. Less than half a second. His -- I heard his 14 shot. I was already almost completely done with my 15 trigger pull at that time, so I heard his shot and then 16 immediately mine.</p> <p>17 Q. Are you familiar with the term sympathetic 18 gunfire?</p> <p>19 A. Yes.</p> <p>20 Q. Have you been trained about that?</p> <p>21 A. Yes.</p> <p>22 Q. When were you first trained about it?</p> <p>23 A. In the military police.</p> <p>24 Q. And what did you learn in that training from the 25 military police about sympathetic gunfire?</p> <p style="text-align: right;">115</p>	<p>1 MR. SCOTT: Q. Okay. At the time of this 2 incident what weapons were on your duty belt?</p> <p>3 MS. FOWLER: Asked and answered, but you can tell 4 him again.</p> <p>5 THE WITNESS: Okay. My duty weapon, the weapon 6 that I had fired that night, pepper spray, my ASP, baton, 7 my M26 Taser and two pocket knives.</p> <p>8 MR. SCOTT: Q. And what type of handgun did you 9 fire that night?</p> <p>10 A. A Sig P226, 40 caliber semi-automatic pistol.</p> <p>11 Q. I'm sorry. A Sig what?</p> <p>12 A. P226, 40 caliber.</p> <p>13 Q. And is that the weapon that you chose or was this 14 just department issued?</p> <p>15 A. It is department issued, however, it is the one I 16 chose. I was given a choice.</p> <p>17 Q. Do you recall what your choices were?</p> <p>18 A. Yes, an H&K 40 caliber or a Beretta 40 caliber.</p> <p>19 Q. And why did you choose the Sig?</p> <p>20 A. A variety of reasons. I was more accurate with 21 it while I was shooting at the range, it fit my hand 22 better. I did not have to adjust my grip at all to use 23 the weapon. I just felt more comfortable with it.</p> <p>24 Q. Okay. Do you know what kind of round you had in 25 your Sig at the time you fired it at Mr. Desantis?</p> <p style="text-align: right;">117</p>

DEPOSITION OF PATRICIA MANN

STATE OF CALIFORNIA

I do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting; that thereafter, the witness was given an opportunity to read and correct the deposition transcript, and to subscribe the same; that if unsigned by the witness, the signature has been waived in accordance with stipulation between counsel for the respective parties.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand the 28th
day of November, 2007.

Judy G. Manfred
Certified Shorthand Reporter

CSR No. 4748